

REFERENCE TITLE: state treasurer; pooled investments

State of Arizona  
Senate  
Forty-seventh Legislature  
Second Regular Session  
2006

## **SB 1247**

Introduced by  
Senators Blendu, Cannell, Flake, Huppenthal

AN ACT

AMENDING SECTION 35-323, ARIZONA REVISED STATUTES; RELATING TO PUBLIC FINANCES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:  
2       Section 1. Section 35-323, Arizona Revised Statutes, is amended to  
3 read:

4           35-323. *Investing public monies; bidding; security and other*  
5           *requirements*

6       A. The treasurer shall invest and reinvest public monies in securities  
7 and deposits with a maximum maturity of five years. All public monies shall  
8 be invested in eligible investments. Eligible investments are:

9           1. Certificates of deposit in eligible depositories.

10          2. Interest bearing savings accounts in banks and savings and loan  
11 institutions doing business in this state whose accounts are insured by  
12 federal deposit insurance for their industry, but only if deposits in excess  
13 of the insured amount are secured by the eligible depository to the same  
14 extent and in the same manner as required under this article.

15          3. Repurchase agreements with a maximum maturity of one hundred eighty  
16 days.

17          4. The pooled investment funds established by the state treasurer  
18 pursuant to ~~section~~ SECTIONS 35-326 AND 41-177.

19          5. Obligations issued or guaranteed by the United States or any of the  
20 senior debt of its agencies, sponsored agencies, corporations, sponsored  
21 corporations or instrumentalities.

22          6. Bonds or other evidences of indebtedness of this state or any of  
23 its counties, incorporated cities or towns or school districts.

24          7. Bonds, notes or evidences of indebtedness of any county, municipal  
25 district, municipal utility or special taxing district within this state that  
26 are payable from revenues, earnings or a special tax specifically pledged for  
27 the payment of the principal and interest on the obligations, and for the  
28 payment of which a lawful sinking fund or reserve fund has been established  
29 and is being maintained, but only if no default in payment on principal or  
30 interest on the obligations to be purchased has occurred within five years of  
31 the date of investment, or, if such obligations were issued less than five  
32 years before the date of investment, no default in payment of principal or  
33 interest has occurred on the obligations to be purchased nor any other  
34 obligations of the issuer within five years of the investment.

35          8. Bonds, notes or evidences of indebtedness issued by any county  
36 improvement district or municipal improvement district in this state to  
37 finance local improvements authorized by law, if the principal and interest  
38 of the obligations are payable from assessments on real property within the  
39 improvement district. An investment shall not be made if:

40           (a) The face value of all such obligations, and similar obligations  
41 outstanding, exceeds fifty per cent of the market value of the real property,  
42 and if improvements on which the bonds or the assessments for the payment of  
43 principal and interest on the bonds are liens inferior only to the liens for  
44 general ad valorem taxes.

1                 (b) A default in payment of principal or interest on the obligations  
2 to be purchased has occurred within five years of the date of investment, or,  
3 if the obligations were issued less than five years before the date of  
4 investment, a default in the payment of principal or interest has occurred on  
5 the obligations to be purchased or on any other obligation of the issuer  
6 within five years of the investment.

7                 9. Commercial paper of prime quality that is rated "P1" by Moody's  
8 investors service or rated "A1" or better by Standard and Poor's rating  
9 service or their successors. All commercial paper must be issued by  
10 corporations organized and doing business in the United States.

11                 10. Bonds, debentures and notes that are issued by corporations  
12 organized and doing business in the United States and that are rated "A" or  
13 better by Moody's investor service or Standard and Poor's rating service or  
14 their successors.

15                 B. Certificates of deposit shall be purchased from the eligible  
16 depository bidding the highest permissible rate of interest. No monies over  
17 one hundred thousand dollars may be awarded at any interest rate less than  
18 one hundred three per cent of the equivalent bond yield of the offer side of  
19 United States treasury bills having a similar term. If the eligible  
20 depository offering to pay the highest rate of interest has bid only for a  
21 portion of the monies to be awarded, the remainder of the monies shall be  
22 awarded to eligible depositories bidding the next highest rates of interest.

23                 C. An eligible depository is not eligible to receive total aggregate  
24 deposits from this state and all its subdivisions in an amount exceeding  
25 twice its capital structure as outlined in the last call of condition of the  
26 superintendent of financial institutions.

27                 D. If two or more eligible depositories submit bids of an identical  
28 rate of interest for all or any portion of the monies to be deposited, the  
29 award of the deposit of the monies shall be made to the eligible depository  
30 among those submitting identical bids having, at the time of the bid opening,  
31 the lowest ratio of total public deposits in relation to its capital  
32 structure.

33                 E. Each bid submitted, and not withdrawn prior to the time specified,  
34 constitutes an irrevocable offer to pay interest as specified in the bid on  
35 the deposit, or portion bid for, and the award of a deposit in accordance  
36 with this section obligates the depository to accept the deposit and pay  
37 interest as specified in the bid pursuant to which the deposit is awarded.

38                 F. The treasurer shall maintain a record of all bids received and  
39 shall make available to the board of deposit at its next regularly scheduled  
40 meeting a correct list showing the bidders, the bids received and the amount  
41 awarded. These records shall be available to the public and shall be kept in  
42 the possession of the treasurer for not less than two years from the date of  
43 the report.

44                 G. Any eligible depository, before receiving a deposit in excess of  
45 the insured amount under this article, shall deliver collateral for the

1 purposes of this subsection equal to at least one hundred one per cent of the  
2 deposit. The collateral shall be any of the following:

3       1. A bond executed by a surety company that is approved by the  
4 treasury department of the United States and authorized to do business in  
5 this state. The bond shall be approved as to form by the legal advisor of  
6 the treasurer.

7       2. Securities or instruments of the following character:

8           (a) United States government or agency obligations.

9           (b) State, county, school district and other district municipal bonds.

10          (c) Registered warrants of this state, a county or other political  
11 subdivisions of this state, when offered as security for monies of the state,  
12 county or political subdivision by which they are issued.

13          (d) First mortgages and trust deeds on improved, unencumbered real  
14 estate located in this state. No single first mortgages or trust deeds may  
15 represent more than ten per cent of the total collateral. The treasurer may  
16 require that the first mortgages or trust deeds comprising the total  
17 collateral security be twice the amount the eligible depository receives on  
18 deposit. First mortgages or trust deeds qualify as collateral subject to the  
19 following limitations:

20           (i) The promissory note or other evidences of indebtedness secured by  
21 such first mortgage or trust deed shall have been in existence for at least  
22 three years and shall not have been in default during this period.

23           (ii) An eligible depository shall at its own expense execute, deposit  
24 with the treasurer and record with the appropriate county recorder a complete  
25 sale and assignment with recourse in a form approved by the attorney general,  
26 together with an unconditional assumption of obligation to promptly pay to  
27 the entitled parties public monies in its custody upon lawful demand and  
28 tender of resale and assignment.

29 Eligible depositories may deposit the security described in this subdivision  
30 with the state treasurer, and county, city or town treasurers may accept the  
31 security described in this subdivision at their option.

32       3. The safekeeping receipt of a federal reserve bank or any bank  
33 located in a reserve city, or any bank authorized to do business in this  
34 state, whose combined capital, surplus and outstanding capital notes and  
35 debentures on the date of the safekeeping receipt are ten million dollars or  
36 more, evidencing the deposit therein of any securities or instruments  
37 described in this section. A safekeeping receipt shall not qualify as  
38 security, if issued by a bank to secure its own public deposits, unless  
39 issued directly through its trust department. The safekeeping receipt shall  
40 show upon its face that it is issued for the account of the treasurer and  
41 shall be delivered to the treasurer. The safekeeping receipt may provide for  
42 the substitution of securities or instruments which qualify under this  
43 section with the affirmative act of the treasurer.

44       H. The securities, instruments or safekeeping receipt for the  
45 securities, instruments or warrants shall be accepted at market value if not

1 above par, and, if at any time their market value becomes less than the  
2 deposit liability to that treasurer, additional securities or instruments  
3 required to guarantee deposits shall be deposited immediately with the  
4 treasurer who made the deposit and deposited by the eligible depository in  
5 which the deposit was made.

6 I. The condition of the surety bond, or the deposit of securities,  
7 instruments or a safekeeping receipt, must be such that the eligible  
8 depository will promptly pay to the parties entitled public monies in its  
9 custody, upon lawful demand, and will, when required by law, pay the monies  
10 to the treasurer making the deposit.

11 J. Notwithstanding the requirements of this section, any institution  
12 qualifying as an eligible depository may accept deposits of public monies to  
13 the total then authorized insurance of accounts, insured by federal deposit  
14 insurance, without depositing a surety bond or securities in lieu of the  
15 surety bond.

16 K. An eligible depository shall report monthly to the treasurer the  
17 total deposits of that treasurer and the par value and the market value of  
18 any pledged collateral securing those deposits.

19 L. When a security or instrument pledged as collateral matures or is  
20 called for redemption, the cash received for the security or instrument shall  
21 be held in place of the security until the depository has obtained a written  
22 release or provided substitute securities or instruments.

23 M. The surety bond, securities, instruments or safekeeping receipt of  
24 an eligible depository shall be deposited with the treasurer making the  
25 deposit, and he shall be the custodian of the bond, securities, instruments  
26 or safekeeping receipt. The treasurer may then deposit with the depository  
27 public monies then in his possession in accordance with this article, but not  
28 in an amount in excess of the surety bond, securities, instruments or  
29 safekeeping receipt deposited, except for federal deposit insurance.

30 N. The following restrictions on investments are applicable:  
31 1. An investment of public operating fund monies shall not be invested  
32 for a duration of longer than three years.

33 2. The board of deposit may order the treasurer to sell any of the  
34 securities, and any order shall specifically describe the securities and fix  
35 the date upon which they are to be sold. Securities so ordered to be sold  
36 shall be sold for cash by the treasurer on the date fixed in the order, at  
37 the then current market price. The treasurer and the members of the board  
38 are not accountable for any loss occasioned by sales of securities at prices  
39 lower than their cost. Any loss or expense shall be charged against earnings  
40 received from investment of public funds.

41 O. If the total amount of subdivision monies available for deposit at  
42 any time is less than one hundred thousand dollars, the subdivision board of  
43 deposit shall award the deposit of the funds to an eligible depository in  
44 accordance with an ordinance or resolution of the governing body of the  
45 subdivision.

1           Sec. 2. Emergency

2       This act is an emergency measure that is necessary to preserve the  
3       public peace, health or safety and is operative immediately as provided by  
4       law.